

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0003P

Gross Income Tax

Fiscal Years Ending 09/30/89, 09/30/90, 09/30/91, 09/30/92, 09/30/93, 09/30/94, 09/30/95,
09/30/96, 09/30/97

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ISSUE(S)

I. **Tax Administration**— Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, incorporated under the laws of New Jersey, was audited for fiscal years ending 09/30/95, 09/30/96, and 09/30/97. Taxpayer timely provided the auditor with federal audit adjustments covering fiscal years 1989, 1990, 1991, 1992, 1993, and 1994. Upon audit it was discovered that the taxpayer failed to report sales from a warehouse in Indiana to customers in Indiana which is the primary assessments of the audit. Taxpayer also had adjustments to adjusted gross income for dividend expenses and the apportionment factors, which resulted in an adjustment to SNIT.

Taxpayer requests that the department waive the negligence penalty.

I. **Tax Administration**— Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty for all years of the audit and the Federal RAR adjustments.

Taxpayer, in a letter dated December 28, 1999 protested penalties assessed and states the results from the federal audit were furnished to the Indiana Department of Revenue in a timely manner and should

not result in a penalty. Taxpayer further states that the balance of the audit assessment relates to routine audit issues where the tax treatment of the items is a matter of judgment and/or interpretation and no part of the deficiency was due to negligence by the taxpayer.

A review of the audit indicates that the taxpayer timely submitted the Federal RAR adjustments to the auditor for fiscal years 1989 through 1992. The department waives the penalty.

Fiscal years 1995, 1996, and 1996, however, include clearly taxable issues; both in gross and adjusted gross income to which the taxpayer should have been aware. The issue of low rate receipts is clear in 45 IAC 1-1-8 and 45 IAC 1-1-9. Taxpayer did not provide reasonable cause for failing to correctly report income

FINDING

Taxpayer's protest is sustained for the penalty assessed in the Federal RAR years and denied for fiscal years 1995, 1996, and 1997.